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ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE FORMAL
COMPLAINT OF CHARLES J. DAINS
AGAINST RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

**RIGBY WATER COMPANY'S
RESPONSE TO THE POST-
HEARING MEMORANDA FILED
BY COMPLAINANT AND STAFF**

Complainant's Initial Brief dated December 15, 2010 ("Complainant's Brief") appears to be based on the belief that repeating inaccurate and unsupported assertions somehow makes such assertions true. That belief is mistaken. Rather than addressing Complainant's own conduct that led directly to the Arizona Corporation Commission's failure to approve the mainline extension agreement between Terra Mobile Ranchettes Estates ("Terra Ranchettes") and Rigby Water Company ("Rigby"), Complainant's Brief focuses on a fanciful recitation of "facts" that bear little, if any, relation to the evidence adduced at the hearing of this matter. Moreover, Complainant ("Mr. Dains") offers no legal justification for his actions, because he cannot. Instead, Complainant asks the Arizona Corporation Commission ("Commission") to misapply its own regulation to a situation it was not meant to address, and to place the onus for complying with the developer's obligations under Commission rules and the parties' mainline extension agreement dated March 2, 1999 (the "Agreement") on Rigby, a position that is not practical given the

1 realities of development.

2 Staff's Opening Brief dated December 15, 2010 ("Staff's Brief") similarly ignores
3 Complainant's role with respect to the approval of the mainline extension agreement at
4 issue, and blindly urges application of a single Commission precedent that Staff's own
5 witness admitted under questioning was factually and legally distinguishable from the
6 present situation. An examination of that decision, however, reveals that it has no
7 applicability to the present situation. Staff's Opening Brief also reflects a mistaken
8 understanding of Commission jurisdiction in the condemnation setting. That
9 misunderstanding should not, however, be at issue in the present proceeding, but should be
10 addressed in Docket No. W-01808A-10-0390, Rigby's pending request for deletion of its
11 Certificate of Convenience and Necessity ("CC&N").

12 Given that Complainant's own actions prevented approval of the parties' mainline
13 extension agreement, the Commission should enter an order finding that Rigby has
14 complied with Commission Rule R14-2-406 and deny the relief sought by Complainant or,
15 alternatively, finding that Complaint's own bad faith actions and the principles of law and
16 equity preclude any relief.

17 **I. ARGUMENT.**

18 **A. Complainant Arguments Are Based on a Fundamentally Inaccurate**
19 **Representation of the Parties' Relationship.**

20 Complainant's Brief is based on, at best, a fanciful interpretation of the evidence
21 adduced at the September hearing in this matter and bears little relationship to the reality
22 disclosed at that hearing. In essence, Mr. Dains' estate, argues, contrary to the evidence in
23 the record, that Mr. Dains entered into a secret deal with Rigby, with Rigby agreeing to
24 repay Mr. Dains the entire cost of the infrastructure installed to service the Terra Ranchettes
25 subdivision in exchange for Mr. Dains installing 30,000 gallons of excess capacity to supply
26 Rigby's existing system. Mr. Dains frames his entire argument around the concept of
27 enforcing that deal (even though, in reality, Mr. Dains' estate is essentially seeking to
28 rescind the Agreement). In taking that position, Mr. Dains' estate would have this tribunal

1 believe that Rigby informed Mr. Dains of the applicability of Commission regulations that
2 specifically address the extension of facilities for public service corporations (and provided
3 him with a copy of those regulations) and that Rigby and Mr. Dains eventually entered into
4 a mainline extension agreement, which contained specific limitations on the repayments to
5 be made to Terra Ranchettes, with the understanding that Rigby was actually purchasing the
6 Terra Ranchettes infrastructure from Mr. Dains. Mr. Dains' estate never explains why
7 Rigby Water Company would enter into such an elaborate subterfuge, because it cannot.
8 Given the penalty set out in A.A.C. R14-2-406(M), there is simply no advantage to a utility
9 in not seeking Commission approval of a mainline extension agreement if it is able to do so.

10 The evidence actually adduced at the hearing shows that when Mr. Dains requested
11 water service for Terra Ranchettes in 1995, Rigby informed Mr. Dains that it would do so,
12 but that such service would be subject to applicable Commission regulations. [Ex. RWC 1
13 (January 25, 1996 letter to Mr. Dains confirming that Rigby would provide service to Terra
14 Ranchettes).]¹ Rigby actually provided Mr. Dains with a copy of those regulations at that
15 time. [Id.] Those regulations specifically provide that any infrastructure constructed
16 pursuant to a mainline extension agreement shall "be the sole property of the [utility],"
17 subject only to the repayment obligations contained in the Rule. A.A.C. R14-2-406(I).
18 Rigby repeatedly reminded Mr. Dains of the applicable Rule prior to and during
19 construction of Terra Ranchettes, and repeatedly requested that Mr. Dains negotiate a
20 mainline extension agreement with Rigby. [See Trans. 171:17-172:15 (Rigby provided Mr.
21 Dains with draft mainline extension agreement within weeks of discovering that
22 construction had commenced); Pre-Filed Direct Testimony of F. Wilkinson at 6:15-24; Ex.
23 RWC 2 (March 19, 1996 letter requesting that Mr. Dains review Commission regulations).]
24 Mr. Dains refused to do so until well after construction of the subdivision was complete.
25 [Trans. 170:14-174:23 (detailing interactions with Mr. Dains); Exs. RWC 3 (July 21, 1998
26

27 ¹ Citations to the record conform to the conventions set out in Rigby's initial post-
28 hearing submission.

1 letter to Mr. Dains requesting that he enter into mainline extension agreement); RWC 4
2 (February 19, 1999 letter to Mr. Dains requesting execution of a mainline extension
3 agreement).] Clearly, the parties did not contemplate a purchase of the Terra Ranchettes
4 infrastructure from Mr. Dains.²

5 **B. Mr. Dains' Bad Faith Actions Preclude Any Relief.**

6 **1. Mr. Dains' Bad Faith Failure to Provide Required Information**
7 **Prevented Commission Approval of the Agreement.**

8 Complainant's Brief also fails to adequately address Mr. Dains' failure to provide
9 Rigby with the information necessary to obtain Commission approval of the Agreement.
10 Specifically, Mr. Dains, as the developer, was required to obtain an Approval to Construct
11 ("ATC") for Terra Ranchettes and to provide that ATC and paid invoices demonstrating
12 actual construction costs to Rigby. [Pre-Filed Direct Testimony of F. Wilkinson at 13:22-
13 14:7, 16:21-17:5; Ex. RWC 5, ¶ 6.] Both of these items are necessary to obtain Commission
14 approval of a mainline extension agreement. See A.A.C. R14-2-406(C) & (M). Mr. Dains
15 did not provide either to Rigby. [Pre-Filed Direct Testimony of F. Wilkinson at 13:22-14:2;
16 see also Trans. 55:25-56:11 (Mr. Charles D. Dains ("Mr. Dains Jr.") admitting that he has
17 no documentation showing that ATC was ever provided to Rigby).] Rather than addressing
18 the legal consequences of Mr. Dains' failure, Complainant's Brief simply ignores
19 Mr. Dains' actions (or lack thereof) and attempts to argue that Rigby should be inferred to
20 have received the ATC and invoices at issue. [Complainant's Brief at 6.] Unfortunately
21 for Complainant, there is no evidentiary support for those claims.

22
23 ² Mr. Dains' claim that Rigby agreed to "purchase" the Terra Ranchettes
24 infrastructure in exchange for Mr. Dains' construction of 30,000 gallons of excess storage is
25 also contrary to the record. As Mr. Wilkinson testified, Rigby met its excess storage
26 obligations through a Commission approved surcharge. [Trans. 132:22-133:19, 174:24-
27 175:10.] The storage constructed by Mr. Dains was required for Terra Ranchettes and the
28 City of Avondale's fire requirements. See Avondale City Code §§ 16-23 (no mobile home
park may be located or operated in City of Avondale unless "city fire protection facilities
are available"); 10-40. (adopting 2003 International Fire Code, including Appendix B,
which requires certain fire flows to residential developments).

1 Mr. Dains' estate argues that Rigby must have been provided the ATC because that
2 document is not mentioned in several letters sent by Rigby to Mr. Dains. [Complainant's
3 Brief at 8-9.] That argument entirely ignores, however, the substantial evidence adduced at
4 the hearing demonstrating that Rigby never received the ATC from Mr. Dains. [See Pre-
5 Filed Direct Testimony of F. Wilkinson at 13:22-14:2; see also Trans. at 55:25-56:11.] As
6 Mr. Wilkinson testified, he repeatedly requested the ATC from Mr. Dains in meetings and
7 conversations. [Pre-Filed Direct Testimony of F. Wilkinson at 13:22-14:2; see also Trans.
8 at 55:25-56:11..] Mr. Dains Jr. admitted that Terra Ranchettes did not have a copy of the
9 ATC or any document indicating it had been provided to Rigby in its records. [Trans.
10 55:25-56:11.] Complainant's discovery and late-filing of the ATC subsequent to the
11 hearing confirms that the ATC was not provided to Rigby at the time the Agreement was
12 executed. [Dains 12.] Most tellingly, Rigby never received approval of the Agreement
13 from the Commission. Despite informing Mr. Dains of the applicable regulations (including
14 the penalty provision sought to be enforced here), and despite having obtained approval of
15 every other mainline extension agreement with which Rigby (and its affiliated companies)
16 was associated, [Pre-Filed Direct Testimony of F. Wilkinson at 14:9-15; Trans. 147:20-
17 148:12; 169:3-14], Complainant asserts that Rigby, in this instance, inexplicably chose to
18 not seek Commission approval of the Agreement. That argument makes no sense and must
19 be rejected.³

20 **2. Mr. Dains' Failure to Provide the Required Information Precludes**
21 **Relief.**

22 Complainant's Brief completely ignores the legal effect his failure to meet his
23 contractual obligations has on the present complaint. As noted in Rigby's Initial Post-
24

25 ³ Complainant's Brief similarly asserts that Mr. Dains construction lender provided
26 copies of paid invoices, required for Commission approval of the Agreement, to Rigby.
27 There is no support in the record for that assertion. [Pre-Filed Testimony of F. Wilkinson at
28 13:22-27, 17:7-27; Trans. 49:16-51:5, 58:12-15 (Mr. Dains Jr. admitting that he doesn't
know that cost information was supplied to Rigby), 75:16-23.]

Hearing Memoranda filed December 15, 2009 (“Rigby’s Initial Brief”), Arizona law clearly precludes a party to a contract, who has frustrated another party’s performance under that contract, from profiting from the failure of that condition. Johnson Int’l, Inc. v. City of Phoenix, 192 Ariz. 466, 471, 967 P.2d 607, 612 (App. 1998) (“A party to a contract cannot prevent the fulfillment of a condition precedent [or subsequent] and later rely on the failure of the condition to argue that no contract exists”); Security Nat’l Life Ins. Co. v. Pre-Need Camelback Plan, Inc., 19 Ariz. App. 580, 582, 509 P.2d 652, 654 (1973); (similar) Williams v. Nall, 4 Ariz. App. 416, 420, 420 P.2d 988, 992 (1966); Siegal v. Haver, 4 Ariz. App. 119, 122, 417 P.2d 928, 931 (1966); see also Holmes v. Graves, 83 Ariz. 174, 177-178, 318 P.2d 354, 356-57 to (1957) (“[s]tatutory provisions enacted for the benefit of individuals may be so far waived by those for whose benefit they were enacted that they are estopped to insist upon their protection”); Rossi v. Hammons, 34 Ariz. 95, 101, 268 P. 181, 183 (1928); Restatement (Second) of Contracts §§ 261, 265 (1981) (“Where, after a contract is made, a party’s performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary”); 17A Am. Jur. 2d Contracts § 666 (2004) (“Impossibility that arises directly or even indirectly from the acts of the promisee [here, Mr. Dains] is considered a sufficient excuse for the other party not performing, since one who prevents performance may not take advantage of the situation”).

Here, Mr. Dains is precluded, as a matter of law, from profiting from his own bad faith actions. Mr. Dains frustrated and prevented Rigby from obtaining Commission approval of the Agreement by refusing to supply the information required to obtain such approval, which he, as the developer, had the sole obligation to obtain and provide. [*Supra* at 4-5.] Mr. Dains now seeks to take advantage of his own bad faith by extracting additional payments from Rigby out of constitutionally-protected condemnation proceeds. His bad faith cannot be rewarded. Requiring Rigby to immediately pay Mr. Dains an amount equal to the funds Mr. Dains allegedly expended in installing the Terra Ranchettes infrastructure,

1 after Mr. Dains frustrated compliance with the Commission's rules, would be grossly
2 inequitable and inconsistent with the public interest. Accordingly, Mr. Dains should be
3 denied any relief.

4 **C. Prior Commission Precedent Does Not Require Relief.**

5 Staff's Opening Brief admits that Rigby did not receive all of the materials it needed
6 from Mr. Dains to file and obtain approval of the Agreement from the Commission. [Staff's
7 Opening Brief at 2.] Staff's Opening Brief, nonetheless, takes the position that Rigby
8 should be forced to immediately repay Mr. Dains' estate the alleged cost of installing the
9 Terra Ranchettes' water infrastructure based on a single Commission precedent that is
10 inapplicable to the present matter. In taking that position, Staff's Opening Brief ignores the
11 testimony of Staff's own witness. As Staff's witness, Mr. Morton, admitted under
12 questioning by Administrative Law Judge Kinsey, Staff would have rejected the Agreement
13 if it was submitted without the ATC. [Trans. 196:1-7 (Staff "would have then just denied it
14 on the basis that enough information wasn't provided").] Mr. Morton's testimony makes
15 clear that even if Rigby had sought assistance from the Commission, no such help would
16 have been forthcoming, and Rigby still would not have received approval of the Agreement.
17 [Id.]

18 Despite the fact that the Commission would not have approved the Agreement
19 without the ATC, which Rigby Water Company did not have, Staff's Opening Brief argues
20 that Commission Decision No. 66593 mandates repayment to Mr. Dains. [Staff's Opening
21 Brief at 3.] In Decision No. 66593, the Commission ordered Park Valley Water Company
22 to immediately refund approximately \$4,600 dollars that the complainant in the case, Mr.
23 Shook, had advanced to Park Valley Water Company for the extension of water service to
24 his single family residence pursuant to a mainline extension agreement. In that case, and as
25 admitted by Staff's witness, Mr. Shook had taken no actions to prevent the filing of the
26 parties' mainline extension agreement. [Trans. 192:6-193:12.] Indeed, a reading of the
27 decision indicates that Park Valley Water Company had tried to improperly treat Mr.
28 Shook's advance in aid of construction as a contribution in aid of construction, which was

1 not subject to refund, on its books. Decision No. 66593 at 3. When that occurred, and Mr.
2 Shook complained, the Commission ordered the return of Mr. Shook's advanced funds.

3 Here, in contrast, Mr. Dains never advanced any funds to Rigby Water Company.
4 [Pre-Filed Direct Testimony of F. Wilkinson at 16:4-6; Trans. 172:22-25.] Instead, Mr.
5 Dains was provided with a copy of the relevant Commission regulations concerning
6 mainline extensions. [Ex. RWC 1.] Mr. Dains chose to install the infrastructure for Terra
7 Ranchettes rather than having Rigby Water Company do so. Mr. Dains began construction
8 of those improvements without notifying Rigby and before executing a mainline extension
9 agreement. [Pre-Filed Direct Testimony of F. Wilkinson at 4:21-27; Trans. 171:17-172:11.]
10 Prior to construction, and continuing until well after construction was complete, Rigby
11 attempted to get Mr. Dains to execute a mainline extension agreement. [See Pre-Filed
12 Direct Testimony of F. Wilkinson at 6:15-24; Trans. 170:14-174:23.] Mr. Dains finally
13 entered into that agreement nearly two years after construction was complete, but only after
14 repeated follow up by Rigby Water Company. [Id.] Even then, Mr. Dains failed to live up
15 to his contractual obligations and frustrated Rigby at every turn. [See supra. at 4-5.] Most
16 glaringly, Mr. Dains failed to provide the ATC and cost information required by
17 Commission rules, preventing approval of the Agreement. [Id.] In those circumstances,
18 Decision No. 66593 simply provides no relevant guidance.

19 **D. Equitable Principles Preclude Relief for Complainant.**

20 **1. Complainant Has Failed to Demonstrate That the Present**
21 **Complaint is Not Barred by the Statute of Limitations, Waiver or**
22 **Laches.**

23 Mr. Dains failed to raise any issue with the alleged "purchase" of Terra Ranchettes
24 for over nine years, only raising an issue when Mr. Dains Jr. discovered that the City might
25 be purchasing Rigby. [See Ex. R-2 (letter from Mr. Dains Jr. to Rigby dated August 15,
26 2006 discussing potential acquisition by City).] At that point, Mr. Dains Jr. filed an
27 informal complaint with the Commission. [Informal Complaint materials docketed by Staff
28 (6/2/2009).] When the sale to the City did not materialize, Mr. Dains (and his son) took no

1 further action and continued to cash the refund payments made by Rigby. [Pre-Filed
2 Testimony of F. Wilkinson at 9:13-13:2; Exs. RWC 9, 10.] Only after the City filed suit to
3 condemn Rigby Water Company's total plant, property and business, and nearly three years
4 after the informal complaint, did Mr. Dains (and his son) take any further steps with respect
5 to the so-called purchase of the Terra Ranchettes' infrastructure by Rigby. [Formal
6 Complaint (3/19/2009).]

7 Under Arizona law, Mr. Dains' delay precludes relief. The statute of limitations
8 begins to run "whenever one person may sue another." Cheatham v. Sahuaro Collection
9 Svc., Inc., 118 Ariz. 452, 454, 577 P.2d 738, 740 (App. 1978); see also Gust, Rosenfeld &
10 Henderson v. Prudential Ins. Co., 182 Ariz. 586, 588, 898 P.2d 964, 966 (1995) (general
11 rule is that "the period of limitations begins to run when the act upon which the legal action
12 is based took place ..."). Here, it is undisputed that the acts underlying Mr. Dains'
13 Complaint occurred no later than 1999, the year Mr. Dains executed the mainline extension
14 agreement. Mr. Dains actually filed an informal complaint against Rigby based on the same
15 facts in 2006, nearly three years before filing the present Complaint. Clearly, the statute of
16 limitations on Mr. Dains' claims began to run years ago. Consequently, Mr. Dains'
17 Complaint must be dismissed as untimely pursuant to A.R.S. § 40-248.

18 To the extent that Complainant alleges that the Complaint is not subject to the two
19 year statute of limitations found in A.R.S. § 40-248, relief is still precluded by the equitable
20 doctrines of laches and waiver. Mr. Dains waited approximately ten years from the time the
21 Agreement was executed (and twelve years after Rigby began providing water service to
22 Terra Ranchettes) to file the present Complaint. During that time, Mr. Dains accepted the
23 benefits of the Agreement to Rigby's detriment. [Pre-Filed Direct Testimony of F.
24 Wilkinson at 9:13-13:2; Exs. RWC 9, 10.] When Mr. Dains believed, due to the lack of
25 negotiations between Rigby and the City, that he would not be able to extract a substantial
26 payment from Rigby, Mr. Dains allowed the initial, informal complaint to be closed by the
27 Commission without any follow up. [Trans. 66:20-67:2.] Only when Mr. Dains (or his son)
28 perceived that there was the opportunity to obtain a substantial windfall from Rigby did he

1 file a formal Complaint. [See Trans. 66:24-67:15.] Under these circumstances, Mr. Dains'
2 unreasonable delay (and knowing waiver of rights) is a bar to recovery. See Harris v.
3 Purcell, 193 Ariz. 409, 412, 973 P.2d 1166, 1169 (1998) (unreasonable prejudicial delay
4 bars recovery).

5 **2. Rigby is Not Being Unjustly Enriched by the City's Condemnation.**

6 Mr. Dains repeatedly argues that Rigby is being unjustly enriched by the City's
7 condemnation of Rigby's business and that Mr. Dains should somehow share in that alleged
8 "windfall." [Complainant's Brief at 5.] In reality, Rigby is receiving nothing more than the
9 constitutionally-mandated fair value of its property, including its monopoly right to provide
10 water service within its CC&N. Under A.R.S. § 9-518, a condemned water utility must be
11 compensated not only for the value of the plant and property taken by a municipality (such
12 as the Terra Ranchettes' pipes and equipment), but also for the goodwill or business value of
13 the exclusive right to provide service within the utility's CC&N, or "going concern value."
14 A.R.S. § 9-518(B) ("the court or jury shall ascertain the compensation to be paid for the
15 taking of the plant and property of the public utility, which shall include the fair and
16 equitable value of such plant and property, including its value as a going concern, . . .")
17 (emphasis supplied); see also City of Phoenix v. Consolidated Water Co., 101 Ariz. 43, 45,
18 415 P.2d 866, 868 (1966) (utility loses not only real property, but also its franchise when
19 city condemns property); City of Tucson v. El Rio Water Co., 101 Ariz. 49, 52, 415 P.2d
20 872, 875 (1966) ("consideration must be given to the utility's exclusive right to engage in
21 business").

22 Complainant, with no support, claims that Rigby is receiving a "windfall" because
23 the depreciated value of the infrastructure reported in schedules in its annual reports to the
24 Commission is less than the compensation it is to receive from the City. [Complainant's
25 Brief at 5.] Complainant ignores the fact that the substantial bulk of the condemnation
26 settlement relates to going concern value and has nothing to do with the relatively minimal
27
28

1 plant and property in Terra Ranchettes. Complainant's unsupported arguments predicated
2 on an emotional appeal to supposed "windfall" profits should be ignored.⁴

3 In reality, it is Mr. Dains' estate that is seeking a windfall recovery in the present
4 proceeding. As Mr. Dains Jr. admitted, he and his father did not sell the Terra Ranchettes
5 lots at a loss. [Trans. 31:25-34:10, 60:19-61:15.] In fact, Mr. Dains Jr. and his father made,
6 conservatively, \$1.6 million, over and above their costs, on the sale of the lots in Terra
7 Ranchettes. [Id.] Complainant now seeks to force Rigby to pay over \$200,000 for the
8 infrastructure that Mr. Dains installed that was necessary to provide water service to the
9 subdivision and, ultimately, to sell those lots. While Complainant claims that equity
10 requires that result, the equities of the situation, as detailed above, actually favor Rigby.

11 **E. A.A.C. R14-2-406(F) Has No Applicability to This Docket.**

12 As noted in Rigby's Initial Brief, the Commission's jurisdiction pursuant to A.A.C.
13 R14-2-406(F) is not implicated by the present situation. Rigby is not seeking transfer of its
14 CC&N to the City. It is merely seeking deletion of its remaining CC&N in Docket No. W-
15 01808A-10-0390 due to the City's taking of its plant, property and operations.

16 With respect to the Commission's jurisdiction, Staff takes the position that the
17 Commission retains jurisdiction over outstanding mainline extension agreements. Staff's
18 position is based on misapplication of an Opinion from the Arizona Attorney General in
19 1962 addressing a voluntary sale of a utility to a municipality. That opinion, by its own
20 terms, does not apply to condemnation. Ariz. Att'y Gen. Op. No. 62-7 at 12. Nonetheless,
21 Staff's position is entirely consistent with Rigby's -- all issues related to the deletion of
22 Rigby's CC&N, including the treatment of the Agreement following deletion, are properly
23 addressed in the pending deletion proceeding, not this proceeding.

24 _____
25 ⁴ Complainant's Brief also claims, without basis, that Rigby "agreed" to be
26 condemned. [Complainant's Brief at 3.] Nothing could be further from the truth. The City
27 filed a condemnation case against Rigby in January 2009. That matter was vigorously
28 litigated for over eighteen months before the parties settled through mediation. Contrary to
Mr. Dains' assertions, Rigby in no way sought or agreed to the taking of its business.

F. Complainant is Not Entitled to Any Interest.

Complainant's argument that Rigby should be required to pay interest because Rigby has had use of the infrastructure for approximately ten years and has not paid Complainant for that use, must be rejected. Complainant's argument ignores the terms of the Agreement, which clearly preclude any interest. [RWC 5, ¶ 16 ("No interest shall be paid on any amount(s) advanced").] To the extent that Rigby is ordered to make any payment to Complainant, which it should not be required to do, the terms of the Agreement must control.

G. In Any Event, Rigby Has Complied With Commission Regulations.

Finally, and in any event, Rigby has unquestionably complied with the applicable Commission regulations. The Agreement has been filed with the Commission on at least two occasions. Following the hearing in this matter, Mr. Dains finally located and provided the ATC to the Commission. [See Dains 12, 13.] At this juncture, Rigby is awaiting only Commission approval of the Agreement. An order recognizing Rigby's compliance with A.A.C. R14-2-406(M) is, therefore, appropriate.

II. CONCLUSION.

Rigby has, despite Mr. Dains lack of cooperation, fully complied with Commission Rules. Despite that compliance, Mr. Dains seeks to double recover the alleged costs of the Terra Ranchettes infrastructure. Mr. Dains' theory of recovery is based entirely on his own bad faith actions, which should not be rewarded. Accordingly, Rigby asks that the Commission enter an order denying any relief to Mr. Dains and closing his Complaint without further action or, alternatively, finding that Rigby's compliance is excused by

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1 Mr. Dains' actions as a matter of law.

2
3 RESPECTFULLY SUBMITTED this 14th day of January, 2011.

4 BRYAN CAVE LLP

5
6
7 By 

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14 **ORIGINAL** and 13 copies of the foregoing
15 filed this 14th day of January, 2011 with:

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20 **COPIES** of the foregoing hand-delivered
21 this 14h day of January, 2011 to:

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